IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 532 OF 1998

1. M/s. Vulcan Laval Ltd.
2. New India Assuarance Co. Ltd. ..Appellants

versus

1. Smt. Shantabai S. Kamble
2. Sou. Kalawati N.Bhalekar
3. Sou. Sulochana M. Rokade
4. Sout. Phulabai K. Pawar
5. Sou. Mayadevi R. Dhende
6. Laxman S. Kamble
7. Raju S. Kamble ..Respondents

Mr. M. G. Barve for the Appellants.

None for the Respondents.

CORAM : D. G. DESHPANDE,J.

DATE : 2ND FEBRUARY,2005

ORAL ORDER :

1. Heard counsel for the appellants. Nobody is present for the respondents, even though they are served.

2. The appellant No.1 is the owner of the

vehicle which caused an accicent to the son of respondent No.1. Compensation of Rs.1,02,000/- was granted with interest at the rate of 12% per annum. The main claimant is the mother, who has lost her young son of 36 years of age.

3. Counsel for the appellant contended that even from the FIR which was lodged by the victim and deceased himself, it is the case of a contributory negligence. He drew my attention to the said FIR. It is exhibited. Wherein he has stated that on 8.12.1989 he went near Khadki Railway Station for a walk. When he was crossing the road from west to east, the bus of the respondent no.1 company was proceeding. His attention was not towards the Pune Road but towards Dapoli Road and he dashed against the bus while he was not looking at that direction.

4. From this portion of the FIR, counsel for the appellants contended that this is a clear case of contributory negligence and therefore compensation should not have been awarded at Rs.1,02,000/-. He aslo contended that the deceased was working as a casual labourer and there is no proof of income. Further, the respondent No.1 i.e. mother was the only dependant on the deceased, and other respondents were married and they were not dependant upon the deceased.

5. The aforesaid portion of the FIR brought to my notice, does indicate that it is a case of contributory negligence. The Tribunal has awarded Rs.1,02,000/- but if the contribory negligence is taken into consideration then the compensation awarded is bound to be reduced. Further, looking to the fact that the mother only, is the real dependant, in my opinion, compensation of Rs.65,000/- would be proper. Therefore, I pass the following order:

ORDER

. Appeal is partly allowed. Claim is reduced to Rs.65,000/- with 12% interest as awarded from the date of application till 1997 and thereafter at 9% till payment. This amount includes no fault liability. Appeal disposed of with no order as to costs.

. Counsel for the Appellants stated that Insurance Company has depsited more amount before the Tribunal as well as in this Court. If that is so, then the insurance company is permitted to withdraw the same from the Tribunal and from this Court after making calcuations.

2.2.2005 (D.G. DESHPANDE,J.)